

National Freedom of Information Officer
Records, FOIA, and Privacy Branch
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Freedom of Information Act Request

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and implementing regulations of the U.S. Environmental Protection Agency (“EPA”), 40 C.F.R. Part 2, I hereby request, on behalf of the Pebble Limited Partnership:

1. All documents related or referring to the “Clean Water Act Section 404(q) Memorandum of Agreement Between The Environmental Protection Agency and The Department of the Army” (signed Aug. 11, 1992) (“1992 MOA”) (attached hereto), including, but not limited to, internal guidance, manuals, handbooks, policies, or procedures related to the 1992 MOA.
2. All communications between EPA, the Department of the Army (“DA”), and/or the U.S. Army Corps of Engineers (“USACE”) regarding the 1992 MOA.
3. All communications with individuals (or organizations) not employed by DA, USACE or EPA regarding the 1992 MOA.
4. All documents or communications related or referring to individual permit decisions that were elevated pursuant to Part IV of the 1992 MOA.
5. All documents or communications, including, but not limited to, internal guidance, manuals, handbooks, policies, or procedures related or referring to the process for coordination between EPA and USACE pursuant to Part II of the 1992 MOA.

This request encompasses any documents or communications from the time periods 1990 through 1995 and 2007 through 2014.

For the purposes of these requests, “documents” or “communications” refers to any electronic, written, graphic, video, or audio matter, however produced or reproduced, whether draft or final versions, and including but not limited to correspondence, emails, email attachments, notes, interoffice communications, reports, memoranda, minutes, summaries, telephone records, telephone message logs or slips, transcripts, call lists, PowerPoint

presentations, spreadsheets, agendas, maps, photographs, data compilations, *Vaughn* indices, privilege logs, or calendars.

In responding to these requests, EPA's search should encompass, but should not be limited to, documents sent to or from email addresses used by current or former EPA employees and representatives, regardless of whether such addresses are private or secondary addresses (e.g., the email address for "Richard Windsor," the personal/secondary email addresses of Phil North, etc.), personal email addresses or official EPA addresses.

If any documents covered by this FOIA request have been deleted, destroyed, removed, or cannot be located, please provide all surrounding documents as well as a list of all records that have been deleted, destroyed, removed, or cannot be located, a description of actions taken in response to the unavailable documents, and any documents relevant to or generated in connection with implementing those actions.

FOIA Exemptions

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information to appeal the denial. *See* 5 U.S.C. § 552(a)(6)(A)(i), (a)(6)(F). To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, addressees and recipients, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for the denial, including identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions, identify and describe the withheld portions, specify the applicable exemption, and provide the remainder of the record. *See* 5 U.S.C. § 552(a)(6)(A)(i), (a)(6)(F), (b).

I encourage you to release any records, or portions thereof, that may technically be shielded by exemptions if there is no purpose served by withholding the requested records. *Chrysler Corp. v. Brown*, 441 U.S. 281, 294-95 (1979) (holding that FOIA exemptions are discretionary). I note that FOIA provides that an arbitrary and capricious refusal to produce responsive documents will result in investigation initiated by special counsel to determine whether disciplinary action is warranted against the individual at the agency primarily responsible for the withholding. 5 U.S.C. § 552(a)(4)(F).

Timing and Mechanics of Production

I request that in responding to this letter, EPA comply with all relevant deadlines and other obligations set forth in FOIA and EPA's regulations, and I look forward to receiving your response within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104. Please produce records on a rolling basis; the search for – and deliberation concerning – certain documents should not delay the production of others that EPA has already retrieved and could turn over. Please note that I am interested in working with EPA to ensure that the burden associated with this FOIA request is minimized to the extent practicable, including discussing phased or prioritized document productions.

I prefer to receive electronic documents, and not paper copies, whenever possible. To the extent possible, I request that EPA provide the requested information in searchable, electronic format on CD, DVD, or external hard drives of sufficient size to contain the production. Electronic files should be provided in their original format, not in PDF containers. Individual emails, and their attachments, should be maintained as single msg files. If this is not possible, then emails and their attachments should be provided in either PST or NSF containers, thereby preserving all attachment information.

I understand that there may be fees and costs associated with this request, and I agree to pay any fees or costs up to \$1,000 associated with making these materials available to us. If the costs will be in excess of \$1,000, please advise me before such costs are incurred.

In responding to the present letter, please mail copies of all requested documents, indices and logs, and any invoice for reasonable FOIA fees to the undersigned.

Thank you for your assistance.

Sincerely,

Robert K. Moir